

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BRIAN W. THOMAS,

Plaintiff,

v.

MARK E. FETZKO, ET AL.,

Defendants.

CIVIL ACTION NO. 3:02-CV-1265

(JUDGE CAPUTO)

BRIAN W. THOMAS,

Plaintiff,

v.

MARK E. FETZKO, ET AL.,

Defendants.

CIVIL ACTION NO. 3:02-CV-1266

(JUDGE CAPUTO)

MEMORANDUM

The above cases have been remanded to me to determine whether or not Plaintiff is entitled to proceed *in forma pauperis*. I issued a Memorandum Order on July 29, 2005 in which I indicated that the Plaintiff, while stating he was unable to pay the filing fee, did not submit enough detail that would permit the Court to rule on the application to proceed *in forma pauperis*. Accordingly, the Court allowed Plaintiff twenty (20) days to file supplemental financial information in support of his application to proceed *in forma pauperis*. The Order also directed the Clerk of Court to send Plaintiff a copy of the form "Affidavit/Declaration in Support of Request to Proceed In Forma Pauperis."

On August 8, 2005, the Plaintiff filed a document entitled "Motion for substitution and recusal for Judge Richard Caputo for cause - The causes are bias, prejudice &

appearance of bias & Discrimination - Motion for change of venue - outside northeastern p.a. & outside The middle district of p.a. and Motion & application for appointment of counsel Due to discrimination & unfair treatment I've received by the judges of this court for proceeding without counsel." To date, the Plaintiff has failed to respond to the Order of July 29, 2005, and has not submitted any additional financial information that would permit the court to rule on his application to proceed *in forma pauperis*.

A. Motion for Substitution and Recusal

Plaintiff's supporting document alleges that the Court has been unfair to the Plaintiff because he has been granted *in forma pauperis* status by all lower courts and higher courts, including the Supreme Court of the United States, but that he has met with resistance from this Court. He alleges that the Court is demanding additional information which is not within the rules of court and is clearly discriminatory.

B. Motion for Change of Venue

The motion for change of venue is unsupported other than the comment and remarks that the Plaintiff has made regarding the motion for substitution and recusal of the undersigned.

C. Motion for Appointment of Counsel

The motion for application for appointment of counsel due to discrimination and unfair treatment is likewise supported by the same comments underlying the motion for substitution and recusal.

There has been no discrimination or bias by the Court involving this Plaintiff. For some reason, the Plaintiff does not want to comply with the Court's Order requesting

additional financial information so as to enable the Court to determine whether or not the Plaintiff qualifies to proceed *in forma pauperis*. As indicated in the July 29, 2005 Memorandum Order, the Court has discretion to grant *in forma pauperis* status, and information necessary to exercise that discretion is appropriate. Therefore, I will deny the motion for substitution and recusal, as well as the motion for change of venue, and motion for appointment of counsel. The motion for substitution and recusal is without basis, as is the motion for change of venue. The motion for appointment of counsel, based upon discrimination and unfair treatment, is likewise without basis. All of these motions will be denied.

As previously noted, the Plaintiff has not filed supplemental financial information in support of his application to proceed *in forma pauperis* within the twenty (20) days as required by the Order of July 29, 2005. The motion to proceed *in forma pauperis* will therefore be denied, and Plaintiff will be afforded thirty (30) days to remit the filing fee in each of the cases.

An appropriate Order follows.

September 2, 2005
Date


A. Richard Caputo
United States District Judge

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NO. 3:02-CV-1265

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BRIAN W. THOMAS,

Plaintiff

v.

MARK E. FETZKO, ET AL.,

Defendants.

NO. 3:02-CV-1266

(JUDGE CAPUTO)

ORDER

NOW, this 2nd day of September, 2005, **IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for substitution & recusal for Judge Richard Caputo for cause is **denied**.
2. Plaintiff's Motion for change of venue - outside northeastern p.a. & outside The (sic) middle district of p.a. is **denied**.
3. Plaintiff's Motion & application for appointment of counsel Due (sic) to discrimination and unfair treatment I've received by the judges of this court for proceeding without counsel is **denied**.
4. Plaintiff's Motion to proceed *in forma pauperis* is **denied**. Plaintiff has thirty (30) days to pay the filing fee in each of the above referenced cases.

5. The Clerk of the Court shall mark these cases **CLOSED** if payment is not received by October 3, 2005.

A handwritten signature in black ink, appearing to read "A. Richard Caputo", written over a horizontal line.

A. Richard Caputo
United States District Judge